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Comment 8. Part 9553.0030, subpart 4, item C. Ms. Vonny Swanson representing Residents, Incorporated, raised concerns about the allocation of central office costs based on resident days when the central office served facilities with very dissimilar resident populations. As explained by Ms. Gomez during the hearing, the proposed rule provides that all costs that can be directly identified to a facility are so identified before an allocation based on resident days is made. Therefore, the situation presented by Ms. Swanson is already addressed in the proposed rule. The Department wishes to retain the proposed provision as published.

Comment 9. Part 9553.0030, subpart 4, item D. Messrs. Larson and Horan asked for clarification of whether or not capital assets used by the central office are included in the investment per bed limit and determination of equity. The central office capital assets not directly used by the facility are not included in the investment per bed limit and determination of equity. The Department proposes to clarify item D by amending Part 9553.0060, subpart 1, item C as follows: insert after line 5, on page 49, "(5) For purposes of this item, the facility's total historical capital cost of capital assets must not include the facility's allowable portion of capital assets of the central, affiliated or corporate office whose costs are allocated to the facility's administrative cost category in accordance with Part 9553.0030, subpart 4, item D." This amendment is necessary and reasonable to clarify the rule's intent. No amendment is necessary to the definition of "equity", since that definition incorporates by reference Part 9553.0060, subpart 1, item C which includes the proposed amendment.

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Comment 10. Part 9553.0030, subpart 4, item E. Mr. Horan expressed concern regarding the use of the depreciation guidelines to establish useful lives of depreciable equipment used by the central, affiliated or corporate office. The Department agrees that the rule, as proposed, would cause additional record keeping without comparable benefit in terms of accuracy. Therefore, the Department proposes to amend the rule as follows: in line 33, page 11, after the word "equipment", insert "<u>except vehicles</u>"; beginning in line 33, page 11, strike "as defined in the depreciation guidelines" and, insert "<u>ten years</u>".

Comment 11. Part 9553.0030, subpart 6. Messrs. Larson and Horan proposed that the rule allow an option to directly identify fringe benefits and payroll taxes. The proposed rule provides for the allocation of these costs to each cost category based on the ratio of allowable salary costs in each category to total salary cost. The Department agrees with the commentors that a choice should be allowed and proposes to amend the rule by striking in line 23, page 12, the word "allocated" and inserting "<u>classified</u>"; on line 26, page 12, after the word "on", insert "<u>direct identification or an allocation using</u>". This amendment is necessary and reasonable to clarify that the direct identification method is also allowed.

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Comment 12. Part 9553.0035, subpart 5. Ms. Eileen Harris, representing Valor Resources and Mr. Peter Sajevic, representing Norhaven Inc. commented on the principles of adequate documentation included in subpart 5. Ms. Harris felt that this subpart is duplicative of Part 9553.0041, General Reporting Requirements. The Department believes that this subpart establishes standards for the record keeping of the facility whereas Part 9553.0041 delineates the reporting requirements. Therefore, both sections of the rule have different purposes.

Ms. Harris was also concerned with the department's request for additional information during a desk audit. Part 9553.0041 specifies the information that must be submitted with the annual cost report and the additional information that may be requested by the Department. If a provider submits an incomplete annual cost report or the Department needs additional information to set the desk audit rate, a request to the provider is necessary, otherwise the report must be rejected or the cost in question must be disallowed. The Department believes that as providers and auditors become more familiar with the new reimbursement rules, these administrative difficulties will be resolved.

Specifically, Ms. Harris requested clarification of item A, subitem 5. The intent of this provision is to require record retention for the five most recent annual cost reports. The Department agrees that clarification is necessary and proposes the following amendment: on line 19, page 14, insert after the word "reports", the phrase "submitted to the commissioner". Beginning on line 1, page 34, strike lines one, two, and three, and insert, "the five most recent annual cost reports submitted to the commissioner.".

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Ms. Harris asked that item B of this subpart be amended to allow the same waiver which is allowed under item A, subitem (3), i.e., if any of the information is not available, the facility need only document good faith effort to obtain it. The Department feels that that waiver would be totally inappropriate in this item since the facility should not be entering into contracts that do not contain this minimal information. This requirement is not a burden on facilities or on consultants. Any prudent business person would require minimally the same information before entering into a contract. The Department wishes to retain this provision as published.

Ms. Harris pointed out that the language in item C starting on line 35, page 14 is repeated in subpart 6, item E. The department agrees that the repetition is not necessary and proposes to amend the rule on page 14, line 35 and 36, and page 15 lines 1 and 2, by striking the sentence "If services are rendered on less than a full time basis, the reasonable compensation must be proportional to that paid for services rendered on a full-time basis." Mr. Sajevic is concerned that this language could have the effect of forcing facilities to pay overtime to live-in staff. The language, however, clearly applies to the situation where less than full-time services are provided. The rule is silent with respect to overtime. Therefore, the Department does not believe that this provision will have the effect feared by Mr. Sajevic and wishes to retain subpart 6, item E, as published.

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Ms. Harris questioned whether the intention of the Department in item C is to require the facility to submit the payroll records. This provision has nothing to do with reporting requirements, but it establishes how compensation must be documented in the payroll records of the facility. The payroll records of any organization must show the period of time for which compensation is being paid and the amount of time worked during the period for each employee. An employee's professionalism is not impaired by this kind of accountability. Independent professionals such as lawyers and accountants who are self-employed keep even more detailed records. The Department wishes to retain this provision as published except for the amendment proposed under this comment.

Comment 13. Part 9553.0035, subpart 6. Ms. Harris expressed concerns with the clarity of this subpart. She specifically requested that the Department define in-kind benefits. The Department feels that such definition is not necessary since in-kind benefits is a commonly understood term used to denote the receipt of a benefit by the employee, such as the use of a car, in lieu of cash. The Department of Economic Security and the Internal Revenue Services have exhaustive rules which define wages including in-kind benefits.

Ms. Harris objects to the provision found in item B, subitem (2) on the basis that such provision cannot be enforced or consistently interpreted. The Department feels that this provision is necessary and reasonable in order to insure that compensation costs which are excessive in terms of industry standards are not reimbursed. The Department has particular concern about compensation paid to family members who might receive substantially more compensation than paid in arms-length transactions within the industry.

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Additionally, this provision is consistent with federal Medicare guidelines found in the Medicare Provider Manual, HCFA, publication 15-1, section 904, page 9-3 to 9-6. (Exhibit AA)

Ms. Harris expressed confusion with the provision in item D. First, Ms. Harris questioned whether or not sick leave can be vested. The answer is "yes". It is a matter of the policy of the employer. Second, Ms. Harris questioned what happens to accrued non-vested vacation or sick leave. The answer is that these amounts are allowable once actually paid to the employee or when the vesting occurs. The department desires to retain the proposed provision as published. This rule is a rate setting rule based on actual cost. It is not reasonable for the state to make payments based on estimated future costs. To include the cost as a historical cost before the cost occurs or vests would result in the state paying large amounts of money that are unconnected at the time of payment to actual cost, and for which actual cost may never be incurred. It is reasonable to expect the state to pay for costs that are certain to occur within a given period but to fund accruals based on probable estimated future expenses is not a prudent use of taxpayer dollars. Further, if the employee is vested for vacation and sick leave, the state has an assurance that the value of the vested vacation and vested sick leave will go to the employee. Additionally, FASB 43 (Exhibit BB) states that regulated industries may deviate for rate setting from GAAP.

Comment 14. Part 9553.0035, subpart 7. Several commentors (Harris, Busch, Searles, and Martin) addressed the limits on transactions between related organizations. The Statement of Need and Reasonableness, page 24, establishes the need for and reasonableness of these provisions. The Department desires to retain the provision as published.

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Comment 15. Part 9553.0035, subpart 8. Ms. Harris argued that repair costs which result from destructive resident behavior should be classified in the program cost category. The Department disagrees on the basis that repair costs are not program costs. Under Ms. Harris' logic, housekeeping costs and, in fact, almost any cost of the facility would have to be classified under the program cost category since most costs are associated with the residents in some fashion. The Department wishes to retain this provision as published.

Additionally, Mr. Johnson commented that capital assets which have a useful life of more than one year and a unit cost of $150 or more must be capitalized. He further stated that this was too low considering today's economy and financing difficulties. Mr. Johnson is mistaken in his comment as the proposed rule states that the threshold for capitalization is $500.

Comment 16. Part 9553.0035, subpart 9. Several commentors (Busch, Harris, and Rowland) questioned the clarity of the rule regarding working capital limits. The Department agrees that clarification is necessary and proposes the following amendment: on line 21, page 18, after "A", strike the phrase "to C" and insert "and B"; on line 23, page 18, after "January 1," strike "1984" and insert "1986"; on line 24, page 18, strike the phrase "the rules and regulations in effect on December 31, 1983" and insert "12 MCAR s 2.05301-2.05315 [Temporary]"; beginning on line 25, page 18, strike to the end of the page, and strike line 1 on page 19; on line 2, page 19, strike "C" and insert "B". The amendment is necessary and reasonable to clarify the intent of the proposed rule.

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Comment 17. Part 9553.0035, subpart 12. Mmes. Harris and Martin suggested that the amortization period for pre-opening costs be changed to 60 months. The Department believes that this request is reasonable in order to allow a shorter period to recover pre-opening costs. Therefore, the Department proposes the following amendment: on line 36, page 19, after the word "than", strike "120" and insert "60".

Comment 18. Part 9553.0035, subpart 14. Messrs. Bjork and Larson, and Ms. Martin had several comments regarding the limit on top management compensation established by this section of the proposed rule.

Item A. Mr. Bjork argued that the difference between the limit on top management compensation for a provider group with 48 or fewer beds and the limit for a provider group with more than 48 beds, is enormous and does not reflect the actual difference in necessary costs. The figure of $847 per bed for provider groups under 48 beds is reasonable because this figure would provide a full time administrator a salary of $40,656. The State believes that this is reasonable compensation for that job. Additionally, a provider group with more than 48 beds can draw additional compensation for each added bed at a reduced, but still significant amount. For example, a provider group with 100 beds can receive for top management compensation $58,752 annually; a provider group with 658 beds can receive for top management compensation $252,936 annually. To take the nursing home industry as an example, the average top management compensation for a facility with up to 40 beds is $16,158; 41-100 beds, $30,880; over 100 beds, $45,716. Therefore, the State maintains that the top management compensation limits established by the

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proposed rule are adequate to attract and maintain quality management in the industry, and reimburse for necessary management functions provided to the facility.

Mr. Bjork also argues that a single facility with more than 48 beds should be allowed to exceed the $40,656 limit. The department disagrees on the basis that the administration of a single facility is less complex than the administration of two or more facilities in different locations.

Mr. Bjork also raises the point that the rule assumes that top managers only work 40 hours. The 48 beds was used to define a full-time level of compensation, not to determine the number of hours worked.

Item B. Mr. Bjork goes to considerable length to explain how the functions of administrators in the ICF/MR industry are much more important than those of assistant commissioners in state government.

This is difficult to reconcile with his earlier expression of doubt that top management in this industry were truly executives given that they work in a regulated industry and that other people make the executive decisions for them (page 13, August 22 transcript).

Ms. Barbara Sundquist, Director of Personnel for the Department of Human Services, was asked to review Mr. Bjork's comments concerning comparability of the position of the Assistant Commissioner and the top management position in an ICF/MR. She indicated that the State has contracted with Hay Associates to do or review evaluations of over 1200 classifications at the State level. She

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explained that the components of the Hay system are: Know-How, Problem Solving, and Accountability. Mr. Bjork contended that number of beds, people supervised, budget size or programs supervised are not dimensions of the Hay system. However, numbers supervised is a component of human relations; size of budget and program affects the categories of know-how, problem solving, and managerial breadth. (See attached exhibit CC explaining Hay job rating system). Therefore these are factors that would go into an evaluation of a position.

Although neither the top management positions in the ICF/MR nor the Department of Human Services Assistant Commissioner position have been formally evaluated though the Hay system, Ms. Sundquist indicated that, based on application of the Hay factors, the position of Assistant Commissioner would definitely have more points assigned than would the top administrator position in the ICF/MR. The Department did not set the administrative limit at the minimum salary for assistant commissioners but rather at the mid-range in order to create a somewhat more generous limit. Additionally, the limit of $53,820 is similar to the maximum salary allowed for chief executive officers of the state hospitals, the largest of which has over 700 beds.

While it is true that the salaries of public employees may be low, the salaries of top management people in the ICF's/MR are also drawn from public sources. Therefore, both the Assistant Commissioner's position and the ICF/MR top management position are under the constraints of public funding limitations.

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